IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

Crl.Rev.Pet.No. 119 of 1999-C

CRA.33/1993 of SESSIONS COURT, KOTTAYAM
CC.271/1989 of JUDL.MAGISTRATE OF FIRST CLASS, PALA
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REVN. PETITIONER:

JOHN @ PACHI, S/O. CHACKO,
THOMMICHATHADATHIL VEEDU, NEAR MUTHOLI KADAVU
NEYYOOR, PULIYANNOOR.

BY ADV. SRI.MATHEW JOHN (K)

RESPONDENTS:

STATE OF KERALA REPRESENTED BY THE DIRECTOR GENERAL OF PUBLIC PROSECUTION, HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTORMR. AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO. 391/1999 IN CRL.R.P.NO. 119 OF 1999

DISMISSED.

12-3-2007 SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.119 of 1999-C

DATED THIS THE 15th day of March 2007

ORDER

The revision petitioner stands convicted and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- for the offence under Section 380 of the Indian Penal Code and in default to undergo simple imprisonment for one month and rigorous imprisonment for six months for the offence under Section 461 I.P.C. The allegation is that on 2-5-1989 at 10.30 a.m. the accused committed theft of a gold chain weighing 12.800 grams kept in the dash of a jeep No.KLI—8127 parked on the road side. The only evidence against the accused is the recovery allegedly effected vide Section 27 of the Evidence Act. The portion of Section 27 statement is that A2 pledged the gold ornaments in Mutholi Service Co-Operative Bank. The same was recovered at the instance of the revision petitioner/A1 according to the prosecution.

2. Counsel for the revision petitioner has pointed out that in the absence of the statement as to the authorship of the concealment, the accused cannot be convicted. Counsel has relied on the decision reported in **Sankara Narayanan v. State of Kerala, 2006(3)KLT**

429. Evidently, the point is well settled since the decision of the Supreme Court in **Pohalya v. State of Maharashtra, AIR 1979 SC 1949.**

In the circumstances, I find that the above evidence did not satisfy the requirements of Section 27 of the Evidence Act. The only incriminating evidence against the accused is the recovery effected on the basis of the above confession statement. Hence, the conviction and sentence of the revision petitioner/A1 is set aside. The revision petitioner is acquitted. The Crl.revision petition is allowed.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P.NO.119 OF 1999-C

ORDER

12-3-2007